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JUL 31 2018	
CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

United States of America,  
Plaintiff,

vs.

Timothy Jason Wells,  
Defendant.

CR-17-01114-1-PHX-DLR

**PLEA AGREEMENT**

Plaintiff, United States of America, and the defendant, TIMOTHY JASON WELLS,  
hereby agree to dispose of this matter on the following terms and conditions:

**1. PLEA**

The defendant will plead guilty to Count 1 of the indictment charging the defendant with a violation of 18 United States Code (U.S.C.) §§ 922(g)(1) and 924(a)(2), Felon in Possession of a Firearm, a Class C felony offense.

**2. MAXIMUM PENALTIES**

a. A violation of 18 U.S.C. § 922(g)(1), is punishable by a maximum fine of \$250,000, a maximum term of imprisonment of 10 years, or both, and a term of supervised release of three years.

b. According to the Sentencing Guidelines issued pursuant to the Sentencing Reform Act of 1984, the Court shall order the defendant to:

1           (1)     make restitution to any victim of the offense pursuant to 18 U.S.C.  
2 § 3663 and/or 3663A, unless the Court determines that restitution would not be  
3 appropriate;

4           (2)     pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a  
5 fine is not appropriate;

6           (3)     serve a term of supervised release when required by statute or when a  
7 sentence of imprisonment of more than one year is imposed (with the understanding that  
8 the Court may impose a term of supervised release in all other cases); and

9           (4)     pay upon conviction a \$100 special assessment for each count to  
10 which the defendant pleads guilty pursuant to 18 U.S.C. § 3013.

11          c.     The Court is required to consider the Sentencing Guidelines in determining  
12 the defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court  
13 is free to exercise its discretion to impose any reasonable sentence up to the maximum set  
14 by statute for the crime(s) of conviction, unless there are stipulations to the contrary that  
15 the Court accepts.

16       **3.     AGREEMENTS REGARDING SENTENCING**

17          a.     Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant  
18 stipulate that defendant's sentence shall not exceed the low end of the applicable sentencing  
19 range under the U.S. Sentencing Guidelines, which range will be determined by the Court  
20 at sentencing. The calculation of the sentencing guidelines range shall not include  
21 any upward or downward departures under Section 4A1.3 or Chapter 5 of the U.S.  
22 Sentencing Guidelines or any upward or downward variances.

23          b.     Stipulation. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and  
24 the defendant stipulate that a four-level enhancement pursuant to U.S.S.G. Section  
25 2K2.1(b)(6)(A) does not apply since the United States cannot demonstrate by a  
26 preponderance of the evidence that defendant had reason to believe that the firearms he  
27 possessed would be transported out of the United States  
28

1           c.     Assets and Financial Responsibility. The defendant shall make a full  
2 accounting of all assets in which the defendant has any legal or equitable interest. The  
3 defendant shall not (and shall not aid or abet any other party to) sell, hide, waste, spend, or  
4 transfer any such assets or property before sentencing, without the prior approval of the  
5 United States (provided, however, that no prior approval will be required for routine, day-  
6 to-day expenditures). The defendant also expressly authorizes the United States Attorney's  
7 Office to immediately obtain a credit report as to the defendant in order to evaluate the  
8 defendant's ability to satisfy any financial obligation imposed by the Court. The defendant  
9 also shall make full disclosure of all current and projected assets to the U.S. Probation  
10 Office immediately and prior to the termination of the defendant's supervised release or  
11 probation, such disclosures to be shared with the U.S. Attorney's Office, including the  
12 Financial Litigation Unit, for any purpose. Finally, the defendant shall participate in the  
13 Inmate Financial Responsibility Program to fulfill all financial obligations due and owing  
14 under this agreement and the law.

15           d.     Acceptance of Responsibility. If the defendant makes full and complete  
16 disclosure to the U.S. Probation Office of the circumstances surrounding the defendant's  
17 commission of the offense, and if the defendant demonstrates an acceptance of  
18 responsibility for this offense up to and including the time of sentencing, the United States  
19 will recommend a two-level reduction in the applicable Sentencing Guidelines offense  
20 level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has an offense level of 16 or more,  
21 the United States will move the Court for an additional one-level reduction in the applicable  
22 Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(b).

23     **4.     AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

24           a.     This office shall not prosecute the defendant for any offenses committed by  
25 the defendant, and known by the United States, in connection with his gun possession in  
26 2017.

27           b.     This agreement does not, in any manner, restrict the actions of the United  
28 States in any other district or bind any other United States Attorney's Office.

1     **5.     COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

2             a.     If the Court, after reviewing this plea agreement, concludes that any  
3     provision contained herein is inappropriate, it may reject the plea agreement and give the  
4     defendant the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P.  
5     11(c)(5).

6             b.     If the defendant's guilty plea or plea agreement is rejected, withdrawn,  
7     vacated, or reversed at any time, this agreement shall be null and void, the United States  
8     shall be free to prosecute the defendant for all crimes of which it then has knowledge and  
9     any charges that have been dismissed because of this plea agreement shall automatically  
10    be reinstated. In such event, the defendant waives any and all objections, motions, and  
11    defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional  
12    restrictions in bringing later charges or proceedings. The defendant understands that any  
13    statements made at the time of the defendant's change of plea or sentencing may be used  
14    against the defendant in any subsequent hearing, trial, or proceeding subject to the  
15    limitations of Fed. R. Evid. 410.

16    **6.     WAIVER OF DEFENSES AND APPEAL RIGHTS**

17             The defendant waives (1) any and all motions, defenses, probable cause  
18    determinations, and objections that the defendant could assert to the indictment or  
19    information; and (2) any right to file an appeal, any collateral attack, and any other writ or  
20    motion that challenges the conviction, an order of restitution or forfeiture, the entry of  
21    judgment against the defendant, or any aspect of the defendant's sentence, including the  
22    manner in which the sentence is determined, including but not limited to any appeals under  
23    18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255  
24    (habeas petitions), and any right to file a motion for modification of sentence, including  
25    under 18 U.S.C. § 3582(c). This waiver shall result in the dismissal of any appeal,  
26    collateral attack, or other motion the defendant might file challenging the conviction, order  
27    of restitution or forfeiture, or sentence in this case. This waiver shall not be construed to  
28    bar an otherwise-preserved claim of ineffective assistance of counsel or of "prosecutorial

1 misconduct” (as that term is defined by Section II.B of Ariz. Ethics Op. 15-01 (2015)).

2 **7. DISCLOSURE OF INFORMATION**

3 a. The United States retains the unrestricted right to provide information and  
4 make any and all statements it deems appropriate to the U.S. Probation Office and to the  
5 Court in connection with the case.

6 b. Any information, statements, documents, and evidence that the defendant  
7 provides to the United States pursuant to this agreement may be used against the defendant  
8 at any time.

9 c. The defendant shall cooperate fully with the U.S. Probation Office. Such  
10 cooperation shall include providing complete and truthful responses to questions posed by  
11 the U.S. Probation Office including, but not limited to, questions relating to:

- 12 (1) criminal convictions, history of drug abuse, and mental illness; and  
13 (2) financial information, including present financial assets or liabilities  
14 that relate to the ability of the defendant to pay a fine or restitution.

15 **8. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

16 a. Nothing in this agreement shall be construed to protect the defendant from  
17 administrative or civil forfeiture proceedings or prohibit the United States from proceeding  
18 with and/or initiating an action for civil forfeiture. Pursuant to 18 U.S.C. § 3613, all  
19 monetary penalties, including restitution imposed by the Court, shall be due immediately  
20 upon judgment, shall be subject to immediate enforcement by the United States, and shall  
21 be submitted to the Treasury Offset Program so that any federal payment or transfer of  
22 returned property the defendant receives may be offset and applied to federal debts (which  
23 offset will not affect the periodic payment schedule). If the Court imposes a schedule of  
24 payments, the schedule of payments shall be merely a schedule of minimum payments and  
25 shall not be a limitation on the methods available to the United States to enforce the  
26 judgment.

27 b. The defendant agrees to forfeit, and hereby forfeits, all interest in any asset  
28 that the defendant owns or over which the defendant exercises control, directly or

1 indirectly, as well as any property that is traceable to, derived from, fungible with, or a  
2 substitute for property that constitutes the proceeds of his offense, or which was used to  
3 facilitate the commission of his offense, including the following property:

- 4 1. American Firearms .38 Special handgun, SN: 21146;
- 5 2. Izhmash Saiga-12, 12 gauge shotgun, SN: H12400463;
- 6 3. Remington Gamemaster 760, 30-06 caliber rifle, SN: A6941560;
- 7 4. Century Arms C39V2, 7.62x39mm caliber rifle, SN: C39V2A10596;
- 8 5. Izhmash Saiga, 7.62x39 caliber rifle, SN: H09182091;
- 9 6. Marlin 60, .22 caliber rifle, SN: 11173342;
- 10 7. PTR Inc. PTR-91, .308 caliber rifle, SN: AW8999;
- 11 8. Mossberg 12 gauge shotgun barrel, no serial number;
- 12 9. Rifle, no make, model, or serial number;
- 13 10. Iver Johnson Champion 12 gauge shotgun, SN: 70218A;
- 14 11. Ruger SR-762, 7.62x39 caliber rifle, SN: 561-12548;
- 15 12. Molot-Oruzhie Ltd VEPR, 7.62x54R caliber rifle, SN: 15VTP9040;
- 16 13. Zastava PAP M92PV, 7.62x39mm pistol, SN: M92PV019868;
- 17 14. Herbert Schmidt/Madison Import Corp .22 caliber revolver, SN: 110503;
- 18 15. Smith & Wesson 686, .357 caliber revolver, SN: AAJ1862;
- 19 16. High Standard DM-101, .22 caliber derringer pistol, SN: 2393209;
- 20 17. Colt Lawman MK III, .357 caliber revolver, SN: 40189L;
- 21 18. Martin Bascaran Martian Commercial, 6.35mm caliber pistol, SN: 13341;
- 22 19. Taurus 85, .38 special revolver, SN: JG95037;
- 23 20. Ruger MK III, .22 caliber pistol, SN: 270-98268;
- 24 21. Smith & Wesson SD40 VE, .40 caliber pistol, SN: HEY2062;
- 25 22. Taurus PT 24/7 Pro 9mm pistol, SN: TZE28160; and
- 26 23. Large amount of ammunition & magazines of various caliber.
- 27
- 28

1           c.     The defendant further agrees to waive all interest in any such asset in any  
2 administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal.  
3 The defendant agrees to consent to the entry of orders of forfeiture for such property and  
4 waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding  
5 notice of the forfeiture in the charging instrument, announcement of the forfeiture at  
6 sentencing, and incorporation of the forfeiture in the judgment. The defendant further  
7 understands and agrees that forfeiture of the assets is appropriate and in accordance with  
8 the applicable forfeiture statutes, which may include Title 8 U.S.C. § 1324(b), Title 18  
9 U.S.C. §§ 924(d), 981, 982 and 2253, Title 21 U.S.C. §§ 853 and 881, and Title 28 U.S.C.  
10 § 2461(c).

11           d.     Forfeiture of the defendant's assets shall not be treated as satisfaction of any  
12 fine, restitution, cost of imprisonment, or any other penalty this court may impose upon the  
13 defendant in addition to forfeiture. This agreement does not preclude the United States  
14 from instituting any civil or administrative forfeiture proceedings as may be appropriate  
15 now or in the future.

16           e.     The defendant agrees to waive all constitutional and statutory challenges in  
17 any manner (including direct appeal, habeas corpus, double jeopardy or any other means)  
18 to any forfeiture imposed as a result of this indictment or any pending or completed  
19 administrative or civil forfeiture actions based upon the course of conduct that provides the  
20 factual basis for the forfeiture, including that the forfeiture constitutes an excessive fine or  
21 punishment. The defendant agrees to take all steps as requested by the United States to  
22 pass clear title to forfeitable assets to the United States, and to testify truthfully in any  
23 judicial forfeiture proceeding. Defendant acknowledges that all property covered by this  
24 agreement is subject to forfeiture as proceeds of illegal conduct, property facilitating illegal  
25 conduct, and substitute assets for property otherwise subject to forfeiture, and that no other  
26 person or entity has a legitimate claim to these items listed.

27           f.     The defendant agrees not to file a claim to any of the listed property in any  
28 civil proceeding, administrative or judicial, which may be initiated. The defendant further



1 agrees that he/she will not contest civil, administrative or judicial forfeiture of the listed  
 2 property. The defendant agrees to waive his right to notice of any forfeiture proceeding  
 3 involving this property, and agrees not to file a claim or assist others in filing a claim in  
 4 that forfeiture proceeding.

5 g. The government reserves its right to proceed against any remaining assets  
 6 not identified either in this agreement or in any civil actions which are being resolved along  
 7 with this plea of guilty, including any property in which the defendant has any interest or  
 8 control, if said assets, real or personal, tangible or intangible were involved in the  
 9 offense(s).

10 h. The defendant hereby waives, and agrees to hold the government and its  
 11 agents and employees harmless from any and all claims whatsoever in connection with the  
 12 seizure, forfeiture, and disposal of the property described above. Without limitation, the  
 13 defendant understands and agrees that by virtue of this plea of guilty, the defendant will  
 14 waive any rights or cause of action that the defendant might otherwise have had to claim  
 15 that he/she is a "substantially prevailing party" for the purpose of recovery of attorney fees  
 16 and other litigation costs in any related civil forfeiture proceeding pursuant to 28 U.S.C. §  
 17 2465(b)(1).

## 18 **9. ELEMENTS**

### 19 **FELON IN POSSESSION OF A FIREARM**

20 On or about July 18, 2017, in the District of Arizona:

- 21 1. The defendant knowingly possessed a firearm;
- 22 2. The firearm had been shipped or transported from one state to another or  
 23 from a foreign nation to the United States; and
- 24 3. At the time that the defendant possessed the firearm, the defendant had been  
 25 convicted of a crime punishable by imprisonment of a term exceeding one year.

26 ///

27 ///



1     **10.     FACTUAL BASIS**

2             a.       The defendant admits that the following facts are true and that if this matter  
3 were to proceed to trial the United States could prove the following facts beyond a  
4 reasonable doubt:

5             b.       On or about July 18, 2017, in the District of Arizona, I knowingly possessed  
6 an American Firearms .38 Special handgun, SN: 21146, which was located in my bedroom  
7 at my residence in Kingman, AZ. I have been told that the .38 Special handgun found in  
8 my bedroom was not manufactured in Arizona and has been shipped and transported in  
9 interstate and foreign commerce. I was previously convicted of Unlawful Sexual  
10 Intercourse with a Minor 3+ years younger, in Superior Court of California, El Dorado  
11 County, case number PO4CRF0087, on or about March 17, 2004. This court has found  
12 that this crime is punishable by imprisonment for a term exceeding one year.

13            c.       The defendant shall swear under oath to the accuracy of this statement and,  
14 if the defendant should be called upon to testify about this matter in the future, any  
15 intentional material inconsistencies in the defendant's testimony may subject the defendant  
16 to additional penalties for perjury or false swearing, which may be enforced by the United  
17 States under this agreement.

18                    **APPROVAL AND ACCEPTANCE OF THE DEFENDANT**

19            I have read the entire plea agreement with the assistance of my attorney. I  
20 understand each of its provisions and I voluntarily agree to it.

21            I have discussed the case and my constitutional and other rights with my attorney.  
22 I understand that by entering my plea of guilty I shall waive my rights to plead not guilty,  
23 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to  
24 present evidence in my defense, to remain silent and refuse to be a witness against myself  
25 by asserting my privilege against self-incrimination, all with the assistance of counsel, and  
26 to be presumed innocent until proven guilty beyond a reasonable doubt.

27            I agree to enter my guilty plea as indicated above on the terms and conditions set  
28 forth in this agreement.

1 I have been advised by my attorney of the nature of the charges to which I am  
2 entering my guilty plea. I have further been advised by my attorney of the nature and range  
3 of the possible sentence and that my ultimate sentence shall be determined by the Court  
4 after consideration of the advisory Sentencing Guidelines.

5 My guilty plea is not the result of force, threats, assurances, or promises, other than  
6 the promises contained in this agreement. I voluntarily agree to the provisions of this  
7 agreement and I agree to be bound according to its provisions.

8 I understand that if I am granted probation or placed on supervised release by the  
9 Court, the terms and conditions of such probation/supervised release are subject to  
10 modification at any time. I further understand that if I violate any of the conditions of my  
11 probation/supervised release, my probation/supervised release may be revoked and upon  
12 such revocation, notwithstanding any other provision of this agreement, I may be required  
13 to serve a term of imprisonment or my sentence otherwise may be altered.

14 This written plea agreement, and any written addenda filed as attachments to this  
15 plea agreement, contain all the terms and conditions of the plea. Any additional  
16 agreements, if any such agreements exist, shall be recorded in a separate document and  
17 may be filed with the Court under seal; accordingly, additional agreements, if any, may not  
18 be in the public record.

19 I further agree that promises, including any predictions as to the Sentencing  
20 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone  
21 (including my attorney) that are not contained within this written plea agreement, are null  
22 and void and have no force and effect.

23 I am satisfied that my defense attorney has represented me in a competent manner.

24 I fully understand the terms and conditions of this plea agreement. I am not now  
25 using or under the influence of any drug, medication, liquor, or other intoxicant or

26 ///

27 ///

depressant that would impair my ability to fully understand the terms and conditions of this plea agreement.

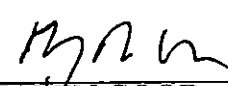
7-31-18  
Date

  
TIMOTHY JASON WELLS  
Defendant

### APPROVAL OF DEFENSE COUNSEL

I have discussed this case and the plea agreement with my client in detail and have advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the constitutional and other rights of an accused, the factual basis for and the nature of the offense to which the guilty plea will be entered, possible defenses, and the consequences of the guilty plea including the maximum statutory sentence possible. I have further discussed the concept of the advisory Sentencing Guidelines with the defendant. No assurances, promises, or representations have been given to me or to the defendant by the United States or any of its representatives that are not contained in this written agreement. I concur in the entry of the plea as indicated above and that the terms and conditions set forth in this agreement are in the best interests of my client. I agree to make a bona fide effort to ensure that the guilty plea is entered in accordance with all the requirements of Fed. R. Crim. P. 11.

7/31/18  
Date

  
BENJAMIN GOOD  
Attorney for Defendant

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**APPROVAL OF THE UNITED STATES**

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth herein are appropriate and are in the best interests of justice.

ELIZABETH A. STRANGE  
First Assistant United States Attorney  
District of Arizona

7-31-18  
Date

  
LISA E. JENNIS  
Assistant U.S. Attorney

**ACCEPTANCE BY THE COURT**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Honorable DOUGLAS L. RAYES  
United States District Judge